Supreme Court, U.S.
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No. 90-1807

In The

Supreme Court of the United States

October Term, 1991

AUGUSTUS J. SIMMONS,

Petitioner,

v.

STATE OF CONNECTICUT AND CONNECTICUT DEPARTMENT OF TRANSPORTATION,

Respondents.

Petition For A Writ Of Certiorari To The Connecticut Supreme Court

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION

RICHARD BLUMENTHAL
Attorney General
State of Connecticut

KENNETH N. TEDFORD
Assistant Attorney General
State of Connecticut
55 Elm Street
Hartford, CT 06106
(203) 566-2257
(Counsel of Record)

ARNOLD K. SHIMELMAN
Assistant Attorney General
State of Connecticut
251 Maxim Road
Hartford, CT 06114
(203) 566-2298

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Should petitioner's cause be reviewed by this Court?

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No. 90-1807

In The

Supreme Court of the United States

October Term, 1991

AUGUSTUS J. SIMMONS,

Petitioner,

v.

STATE OF CONNECTICUT AND CONNECTICUT DEPARTMENT OF TRANSPORTATION,

Respondents.

Petition For A Writ Of Certiorari To The Connecticut Supreme Court

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION

The respondents, State of Connecticut and the Connecticut Department of Transportation, pray that a writ of certiorari, as requested by the petitioner, not be issued to review the judgment of the Connecticut Supreme Court rendered on February 28, 1991.

STATEMENT OF THE CASE

The sole issue before the Connecticut Appellate Court, P. App. at App. 11,[1] and the Connecticut Supreme Court, P. App. at App. 12, was the granting by the Connecticut Superior Court of the respondents' motion to dismiss an amended complaint on the grounds of sovereign immunity in state court proceedings, P. App. at App. 8-10.

The history of litigation over three decades between the petitioner and the respondent, State of Connecticut, its officers and employees, is so unusual that a brief summary should aid this Court in its deliberation of the pending Petition.

This is the most recent in a long series of litigation between the parties and others going back to the year 1963 and the third time the parties have appeared before the Supreme Court of the United States.[2] All of these trial and appellate court actions concerned title to the same three parcels of land situated in the Town of East Granby, Connecticut at the end of Runway 6/24 at Bradley International Airport.

On January 4, 1978, a final judgment by stipulation of five re-opened and consolidated Superior Court cases

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[1] The Appendix to the petition is designated "P. App. at App. ___."

[2] *Augustus J. Simmons v. United States, et al.*, No. 83-1833, *cert. denied*, October 1, 1984. App. A-1. *Augustus J. Simmons v. J. William Burns, Commissioner, et al.* No. 88-693, *cert. denied*, November 28, 1988. App. A-2.

seemed to finally end the prior years of litigation. P. App. at App. 13-17.

The petitioner represented by counsel and appearing pro se, agreed to convey the subject land to the State for $385,600. The petitioner subsequently refused to accept the agreed upon compensation, and the State secured a Supplemental Judgment dated June 2, 1978, which reaffirmed the January 4, 1978 judgment and vested title to the three parcels in the State and ordered the State to deposit, with the Clerk of the Superior Court, $385,600 on the petitioner's behalf. P. App. at App. 18-31. In 1980, the Supreme Court of Connecticut recognized the validity of this stipulated final judgment in *Simmons v. Wetherall*, 180 Conn. 587, 430 A.2d 1296 (1980). P. App. at App. 5.

In compliance with the Supplemental Judgment, the State deposited $385,600 with the clerk. The clerk continues to hold these funds on deposit with the Connecticut National Bank for the benefit of the petitioner, encumbrancers and lienors, consistent with the Supplemental Judgment. As of February 1991, the balance, with accrued interest was approximately $518,600.[3]

In February 1984 the petitioner filed a "Claim for Declaratory Judgment" in the Superior Court. The petitioner sought a declaratory judgment on eleven different issues regarding the same three parcels of land. He also

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[3] These funds were recently drawn down upon by Court Order upon a Motion for Payment by a listed encumbrancer. The petitioner participated in and did not object to the same, and this process was consistent with the Judgment and Supplemental Judgment (*Simmons v. Wetherall*, No. 163875, June 11, 1990). App. A-3.

sought to void the judgment settling the prior litigation, which had been upheld by the Connecticut Supreme Court in 1980. The trial court denied the declaratory relief sought, and this decision was upheld by the Connecticut Appellate Court. (*Simmons v. Wetherall*, 3 Conn. App. 672, 491 A.2d 1908 (1985)).

Undaunted, the petitioner returned to the Superior Court in January of 1986 with another civil action seeking to relitigate the issues previously determined and affirmed in *Simmons v. Wetherall*, 180 Conn. 587, 430 A.2d 1296 (1980). The State's motion to dismiss was granted by the Court. This decision was also affirmed by the Appellate Court (*Simmons v. Burns*, 9 Conn. App. 802 (1986)), and a petition for certification to appeal was denied by the Connecticut Supreme Court on November 25, 1986 (*Simmons v. Burns*, 201 Conn. 815 (1986)).

The petitioner, refusing to acknowledge the finality of the prior judicial decisions, initiated yet another Superior Court action in August 1987. That action was, in essence, an attack on the June 2, 1978 Supplemental Judgment. The trial Court granted the State's Motion to Dismiss on the grounds of sovereign immunity.

Although this State action was dismissed, the federal defendant, the Federal Aviation Administration, petitioned for removal prior to the filing of the court's decision and, therefore, the State was before the U.S. District Court. The State filed a motion to dismiss as to the State defendants. This motion was granted by the Court (Dorsey, J.) on November 10, 1987 (Ruling on Motion to Dismiss, Docket No. H-87-732, App. A-6). The petitioner

moved to set aside this decision, and the Court (Cabranes, J.) denied this motion and dismissed the case with prejudice (Ruling on Pending Motions and Order March 15, 1988, Docket No. H-87-732. App. A-8).

It is of particular note that Judge Cabranes also enjoined the petitioner from filing in the U.S. District Court " . . . any lawsuit in which he asserts the same claims as were litigated, or as might have been litigated, in the Connecticut Superior Court cases referred to as *Simmons v. Wetherall* . . . 180 Conn. 587 (1980), and all the cases consolidated therewith." App. A-22.

The petitioner appealed to the United States Court of Appeals for the Second Circuit, which Court affirmed the U.S. District Court decision, including the injunction against further federal litigation. *Simmons v. Burns, et al.*, Order, Docket No. 88-6093, September 14, 1988. App. A-27.

This Supreme Court of the United States denied the petitioner's petition for a writ of certiorari, *Simmons v. Burns, et al.*, No. 88-693, *cert. denied*, November 28, 1988. App. A-2.

The petitioner has also sought direct relief in the federal court system on numerous occasions. In 1981 he initiated an action alleging that the taking of his land violated his constitutional rights, and in 1983 he initiated an action sounding in trespass and ejectment. These two cases were consolidated and the United States District Court (Cabranes, J.) dismissed the suits holding the issues to be barred by the doctrine of res judicata and also an impermissible collateral attack on a valid state court judgment. App. A-30. Judge Cabranes' order was

affirmed by the U.S. Court of Appeals for the Second Circuit on December 20, 1983. App. A-34, and this Supreme Court denied a petition for certiorari on October 1, 1984. *Simmons v. United States, et al.*, No. 83-1833, *cert. denied*, October 1, 1984. App. A-1.

Notwithstanding the above dispositions by both the state and federal courts, the petitioner initiated yet another federal court action in January of 1985. In an attempt to avoid the res judicata effect of the 1978 State court judgment, he alleged new violations of federal statutes by the State and other defendants. The central issue of this federal court litigation was the question of ownership of the three parcels of land, the subject of this Petition. On April 8, 1985, the District Court dismissed the petitioner's claims on the grounds of res judicata. The U.S. Court of Appeals, for the Second Circuit, affirmed this judgment on November 22, 1985 (App. A-37). In addition to affirming the trial court, the Court of Appeals' decision states as follows:

> We also consider this a frivolous appeal. Appellant has litigated the same matters numerous times before in both state and federal courts over a period of many years. Because appellant is a pro se litigant, we are not imposing sanctions at this time. However, appellant is hereby placed on notice that he risks imposition of sanctions in the future should he seek once again to relitigate these same matters (App. A-38).

The litigation that is the subject of this Petition for a Writ of Certiorari is an alleged quiet title action under Connecticut law in state court. The Connecticut Supreme Court denied a petition for certification (P. App., at App.

12) to appeal from the Appellate Court decision (P. App., at App. 11), which decision affirmed the trial court's dismissal of the action (P. App., at App. 8-10).

The issues raised in this litigation are, in essence, the same that petitioner has repeatedly raised in the many prior actions instituted by the petitioner and which have been conclusively resolved against him. The petitioner now asks this Supreme Court to consider them yet again. Clearly, under Rule 10 of the Rules of the Supreme Court of the United States, the considerations governing review on the writ of certiorari establish beyond doubt that petitioner's cause does not warrant review.

REASONS FOR DENIAL OF THE PETITION

The respondents respectfully represent that there are no special or important reasons to support the Petition. The Connecticut Supreme Court denial of certification has not decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals, nor does the decision of the Connecticut Supreme Court decide a federal question in a way that conflicts with applicable decisions of this Supreme Court.

ARGUMENT

THE COURTS BELOW DID NOT ERR IN GRANTING AND AFFIRMING THE RESPONDENTS' MOTION TO DISMISS THE AMENDED COMPLAINT ON THE GROUNDS OF SOVEREIGN IMMUNITY.

A. Motion To Dismiss

The sole issue before the appellate courts was to determine if the trial court properly dismissed the amended complaint on the grounds of sovereign immunity, raised by the respondent's motion to dismiss. "The doctrine of sovereign immunity involves the jurisdiction of the court over the subject matter of the action." *Horton v. Meskill*, 172 Conn. 615, 624, 376 A.2d 359 (1977)).

In *Kinney v. State*, 213 Conn. 54, 58, 566 A.2d 426 (1989), the Connecticut Supreme Court most recently stated as follows:

> "Once an issue of subject matter jurisdiction is raised, the court must dispose of this legal question as a threshold matter. (citing cases). 'Whenever a court discovers that it has no jurisdiction, it is bound to dismiss the case . . . ' (citing cases)."

This case did not proceed beyond the granting of the State's motion to dismiss the amended complaint. The trial court decision on the "threshold matter" of subject matter jurisdiction and sovereign immunity was dispositive of the case, and there was no further judicial action taken on the allegations or merits of the amended complaint.

The petitioner raises issues that exceed the jurisdictional issues raised by the State's motion to dismiss and seeks to introduce, before this United States Supreme

Court, evidentiary matters or legal issues that go to the merits of the allegations in the amended complaint. Such evidentiary matters are properly within the jurisdiction of the trial court, absent the disposition of this matter by the trial court on jurisdictional issues in granting the respondents' motion to dismiss.

B. The Amended Complaint Is Barred By The Doctrine Of Sovereign Immunity.

It is an established principle of law, recognized and upheld by the Connecticut Supreme Court, that the State cannot be sued without its consent. *Horton v. Meskill*, 172 Conn. 615, 623, 376 A.2d 359 (1977); *Textron, Inc. v. Wood*, 167 Conn. 334, 339, 355 A.2d 307 (1974).

In *Duguay v. Hopkins*, 191 Conn. 222, 227, 464 A.2d 45 (1983), the Supreme Court reiterated the law as follows:

> It is well established law that the state is immune from suit unless it consents to be sued by appropriate legislation waiving sovereign immunity in certain prescribed cases. *Baker v. Ives*, 162 Conn. 295, 298, 294 A.2d 290 (1972); *Murphy v. Ives*, 151 Conn. 259, 262-63, 196 A.2d 596 (1963).

Two narrow exceptions to the doctrine of sovereign immunity are also set out in a footnote on page 227 of *Duguay v. Hopkins, supra.*[4] The courts below determined

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[4] The State is subject to suit without consent in an action for declaratory judgment where the defendant state officer is allegedly proceeding under an unconstitutional statute or in excess of his statutory authority; *Horton v. Meskill*, 172 Conn.

(Continued on following page)

that the amended complaint does not fall within the purview or scope of these exceptions because the petitioner is seeking coercive relief, damages, costs and the setting aside of prior Superior Court judgments, as affirmed by the Connecticut Supreme Court. The courts below found that there is no proper nor sufficient allegation or claim that the respondents have proceeded under an unconstitutional statute or have acted in an unconstitutional manner. In addition, the relief sought by the petitioner would clearly be an undue interference with governmental functions, as the same would have a direct adverse impact on Bradley International Airport, the Connecticut Department of Transportation and the State of Connecticut.

The petitioner does claim that the instant case was filed as a quiet title action under C.G.S. Sec. 47-31, which is entitled "Action to settle title or claim interest in real or personal property." P. App. at App. 58-60.

Assuming, solely for this argument, that the amended complaint is brought under Sec. 47-31 C.G.S., this statute does not confer the trial court with jurisdiction over the subject matter. In *Struckman v. Burns*, 205 Conn. 542, 558, 534 A.2d 888 (1987), the Connecticut Supreme Court held:

(Continued from previous page)

615, 624, 376 A.2d 359 (1977); and in a suit for injunctive relief when the action does not defeat the purpose of the doctrine of sovereign immunity by undue interference with governmental functions. *Sentner v. Board of Trustees*, 184 Conn. 339, 439 A.2d 1033 (1981).

> It is a matter for the legislature, not this court, to determine when our state's sovereign immunity should be waived. "The question whether the principles of governmental immunity from suit and liability are waived is a matter for legislative, not judicial, determination. *Rogan v. Board of Trustees*, 178 Conn. 579, 582, 424 A.2d 274 (1979); *Bergner v. State*, 144 Conn. 282, 286-87, 130 A.2d 293 (1957)." *Duguay v. Hopkins*, 191 Conn. 222, 228, 464 A.2d 45 (1983). *Sovereign immunity may be waived only through a statute.* Id. Any statutory waiver of immunity must be narrowly construed. Id. *"The State's sovereign right not to be sued may be waived by the legislature, provided clear intention to that effect is disclosed 'by the use of express terms or by force of a necessary implication.' Baker v. Ives*, [162 Conn. 295, 298, 294 A.2d 290 (1972)]; *Murphy v. Ives*, [151 Conn. 259, 262-63, 196 A.2d 596 (1963)]." Id. (Emphasis added).

Clearly, Sec. 47-31 C.G.S. does not waive sovereign immunity, as the statute does not expressly nor by force of necessary implication provide the required clear intention.

C. Constitutional Issues

It is recognized that under proper circumstances and with the proper framing of a complaint, the doctrine of sovereign immunity is not available as a defense for just compensation arising under Article First, Section 11 of the State Constitution. See *Textron, Inc. v. Wood*, 167 Conn. 334, 342, 355 A.2d 307 (1974).

The Connecticut Supreme Court has clarified the essentials of a complaint if constitutional issues are to be raised.

> The complaint, to survive the defense of sovereign immunity, must allege sufficient facts to support a finding of a taking of [property] in a constitutional sense . . . " *Horak v. State*, 171 Conn. 257, 261, 368 A.2d 155 (1976). Where "the complaint is insufficient to establish an unconstitutional taking . . . the doctrine of sovereign immunity is a sufficient bar to the jurisdiction of the court" Id., 262.

Upson v. State, 190 Conn. 622, 625, 461 A.2d 991 (1983).

In *Upson*, 626, the Supreme Court declared that the *mere allegation* of wrongful taking, coupled with an allegation of constitutional violation, are *not sufficient* to preclude the court from an inquiry concerning a claimed jurisdictional defect such as sovereign immunity. At page 626 of *Upson*, supra, the Court stated as follows:

> Regardless of the phraseology in the nature of a conclusion employed by the pleader, if the fact of the record indicates that the court is without jurisdiction, the complaint must be dismissed. *Horak v. State*, supra, 260. A reading of the trial court's decision demonstrates conclusively that the court analyzed the facts alleged in the complaint and concluded that those facts did not amount to an unconstitutional taking, and that, therefore, the court lacked jurisdiction. We concur in the conclusion of the trial court that the record on its face discloses that the plaintiff was fully compensated, that there was no unconstitutional taking, and that the defendant's motion to dismiss was correctly granted.

The courts below found the facts alleged in the amended complaint do not amount to a proper allegation of unconstitutional activity by the State defendants. The appellate courts below determined that the amended complaint in this matter, as in *Upson*, supra, fails to meet

the tests established by the Connecticut Supreme Court, and thus, the trial court was correct in its analysis of the facts alleged and in granting the State's motion to dismiss.

D. Violation Of Federal Law

The petitioner argues that the existence of a federal statutory scheme for relocation assistance and real property acquisition (Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 USC Sec. 4601, *et seq.* "Uniform Act") is all that is required to defeat the respondents' immunity from suit in the Connecticut courts. The respondents argue that such an assertion is without a foundation or basis in law.

The issue of the Uniform Act (42 USC Sec. 4601 *et seq.*) was not an issue before the trial court, and it is not cited in the amended complaint as a basis for any federal claim or as a waiver of sovereign immunity.

Notwithstanding the argument offered by the petitioner, the federal law itself provides an answer by express provision as follows:

> Sec. 4602 Effect upon property acquisition
>
> (a) The provisions of Section 4651 of this title *create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase* or condemnation.
>
> (b) Nothing in this chapter shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately prior to January 2, 1971. (42 USC Sec. 4602) (Emphasis added).

42 USC Sec. 4651 provides for the adoption, for federal programs, of a uniform policy on real property acquisition practices, and 42 USC Sec. 4655 requires that the states also be guided by the same policy.

The courts have interpreted 42 USC Sec. 4602 as follows:

> The relocation and acquisition statutes were intended to set forth guidelines rather than to create rights of the kind giving rise to a legal cause of action. *Consumer Power Co. v. Costle*, 468 F. Sup. 375 (D. Mich, 1979) *aff'd*, 615 F.2d 1147 (6th Cir. 1980).
>
> No rights are created in favor of property owners enforceable in district court, and this statutory scheme merely sets policy guidelines to be followed in acquisition of real property. *Rubin v. Department of Housing and Urban Development*, 347 F. Supp. 555 (D. Pa. 1972).
>
> The congressional intent behind 42 USC Sec. 4602(a) is to preclude judicial review of federal and State agency actions under real property acquisitions set forth in 42 USC Sec. 4651. *Barnhart v. Brinegar*, 362 F. Supp. 464 (W.D. Mo. 1973).

By its express terms, the Uniform Act does not waive the State's sovereign immunity from suit.

The petitioner misleads this Court in his reliance upon *Fitzpatrick v. Bitzer*, 427 U.S. 445, 96 S. Ct. 2666 (1976). *Fitzpatrick* was a Title VII, Civil Rights Act federal court action, which Congress authorized to be brought against a state defendant under Section 5 of the Fourteenth Amendment. The issue was whether there was an express waiver of a state's sovereign immunity under the Eleventh Amendment. *Fitzpatrick* was not an action

brought under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 USC Sec. 4601 *et seq.*), nor did it involve the defendant's sovereign immunity in state court actions.

Similarily, *Parden v. Terminal R. Co.*, 377 U.S. 184, 84 S. Ct. 1207 (1964), is not applicable to the matter before this Court, as in *Parden*, there was a congressional intent to abrogate the immunity conferred by the Eleventh Amendment. The Uniform Relocation Assistance and Real Property Acquisition Policies Act does not contain a provision that expressly creates a cause of action against the State. In fact, the contrary is set forth in 42 USC Sec. 4602.

The petitioner has misread the case of *New Haven v. East Haven*, 35 Conn. Supp. 157, 402 A.2d 345 (1977), and tortures its holding in its favor. The *New Haven* case is founded on Connecticut law and has no relevance to the federal law cited by the plaintiff. East Haven had attempted to acquire, by condemnation, a portion of Tweed-New Haven Airport, owned by the City of New Haven, but located in East Haven. New Haven sought to enjoin this action and was successful. There was no issue of sovereign immunity nor waiver of immunity.

The case of *City of Columbia v. Costle*, 710 F.2d 1009 (1983), cited by the petitioner does not even discuss the issue of a state's sovereign immunity. The case did involve the Uniform Act, but the issue was a contract dispute over grant agreement language between the municipality and the federal Environmental Protection Agency.

CONCLUSION

Based upon the foregoing, it is clear that the petitioner has not established any basis upon which this Court, in its discretion, should grant review. Accordingly, it is respectfully urged that the petition be denied.

Respectfully submitted,

Respondents

RICHARD BLUMENTHAL
Attorney General
State of Connecticut

KENNETH N. TEDFORD
Assistant Attorney General
State of Connecticut
55 Elm Street
Hartford, CT 06106
(203) 566-2257
(Counsel of Record)

ARNOLD K. SHIMELMAN
Assistant Attorney General
State of Connecticut
251 Maxim Road
Hartford, CT 06114
(203) 566-2298

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SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

October 1, 1984

Mr. Gerard J. Dowling
P.O. Box 120
Hartford, CT 06101

Re: Augustus J. Simmons,
v. United States, et al.
No. 83-1833

Dear Mr. Dowling:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Very truly yours,
Alexander L. Stevas, Clerk

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

November 28, 1988

Mr. Carl J. Schuman
Office of Atty. General
30 Trinity Street
Hartford, CT 06106

Re: Augustus J. Simmons,
v. J. William Burns, Commissioner, Connecticut Department of Transportation, et al.
No. 88-693

Dear Mr. Schuman:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Very truly yours,

Joseph F. Spaniol, Jr., Clerk
/s/ Joseph F. Spaniol, Jr.

No. 20 21 21-8

STATE OF CONNECTICUT

VS. AUGUSTUS J. SIMMONS : SUPERIOR COURT

NO. 19 92 30-9

AUGUSTUS J. SIMMONS : JUDICIAL DISTRICT OF HARTFORD/NEW BRITAIN AT HARTFORD

VS.

SAMUEL KANNELL, ET AL

NO. 14 09 65

STATE OF CONNECTICUT

VS.

ANASTASIA SIMMONS
AUGUSTUS J. SIMMONS
and
CHARLES SIMMONS

NO. 16 29 23

AUGUSTUS J. SIMMONS

VS.

FRANK C. PARIZEK, ET AL

NO. 16 38 75

AUGUST J. SIMMONS

VS.

HORACE B. WETHERELL, ET AL : MAY 29, 1990

MOTION FOR PAYMENT

JEROME DIAMOND; hereby moves the court to for [sic] an order of payment of a mortgage from Augustus J. Simmons to Jerome Diamond including all costs of foreclosure.

In support of said Motion he represents:

1. Said mortgage was supposed to have been paid in full by virtue of the decision of Judge John Brennan and a release to have been filed on the land records;

2. Funds are being held in the name of Augustus J. Simmons by the court for payment of liens on the property;

3. The State of Connecticut has taken the position before the court that Augustus J. Simmons can file a Motion for Payment with the court;

4. In the absence of payment by the court, Augustus J. Simmons will suffer a foreclosure of his land.

Wherefore, the court should grant the Motion and order payment of the entire mortgage debt to Jerome Diamond and all costs for foreclosure in Case No. CV 87 0327480 S.

ARGUMENT REQUESTED
TESTIMONY NOT REQUIRED

JEROME DIAMOND
By /s/ Richard B. Laschever
His Attorney

ORDER

The foregoing Motion having been heard by the Court, it is ORDERED: GRANTED. The sum of $116,552.28 shall be paid to JEROME DIAMOND, c/o ATTY. RICHARD LASCHEVER from said fund.

JUNE 11, 1990

BY THE COURT

/s/ illegible

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

AUGUSTUS J. SIMMONS :

-vs- : Civil No. H-87-732

J. WILLIAM BURNS, et al. : (PCD)

RULING ON MOTION TO DISMISS

Plaintiff commenced this action in state court on August 10, 1987. The action was removed to this court on the petition of the defendant Administrator of the Federal Aviation Administration. Defendants Julian Tashjian, Secretary of the State of Connecticut, and William Burns, Commissioner of the Connecticut Department of Transportation, move to dismiss the action as to them.

Plaintiff's complaint against the state defendants essentially seeks to quiet title to certain parcels of land and to eject the State of Connecticut from possession of that land. The complaint is only the latest in a long line of state and federal actions which plaintiff has filed relating to the same subject. However, these issues were validly and finally adjudicated in *Simmons v. Wetherall*, No. 163875 (Superior Court January 4, 1978, as modified June 2, 1978). The judgment entered in that case was affirmed on appeal by the Connecticut Supreme Court. *Simmons v. Wetherall*, 180 Conn. 587 (1980). Plaintiff is bound by that judgment through the doctrine of res judicata. Moreover, his complaint is impermissible either as an attempt to appeal to this court from the state court judgment, *Rooker v. Fidelity Trust Co.*, 261 U.S. 114 (1923), or to collaterally attack that judgment.

For the foregoing reasons, the motion of the state defendants to dismiss the complaint is granted.

SO ORDERED.

Dated at Hartford, Connecticut, this 10th day of November, 1987.

/s/ Peter C. Dorsey
Peter C. Dorsey
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

AUGUSTUS J. SIMMONS :

v. : CIVIL NO. H-87-732(JAC)

WILLIAM BURNS, et al. :

RULING ON PENDING MOTIONS
AND ORDER

(Filed March 15, 1988)

This represents the latest, and this court hopes, the final chapter in the epic tale of one *pro se* plaintiff's passion for engaging in vexatious litigation. Plaintiff Augustus Simmons has struggled for over twenty-four years to control several parcels of land situated in the Town of East Granby, parcels which long ago became part of Bradley Interational [sic] Airport. The instant action seeks, *inter alia*, declaratory and injunctive relief and damages against various state and federal defendants, all of which claims rest upon plaintiff's reassertion of his lawful ownership of these parcels. Insofar as is relevant to the pending motions, plaintiff also asserts various complaints against two attorneys who represented him at an earlier stage in this struggle. Presently pending is an assortment of motions filed by plaintiff of varying degrees of intelligbility [sic] and importance. Because the determinations on the merits of Plaintiff's Motion to Set Aside Dismissal of State Defendants (filed Dec. 1, 1987) ("Motion to Set Aside Dismissal"), the Federal Defendant's Motion to Dismiss (filed Nov. 30, 1987) and Defendant Rogin and Hirtle's Motion for Summary Judgment (filed Jan. 6, 1988) are dispositive of the claims against

these defendants, these are the only motions which the court will discuss at any length.

For the reasons set forth below, the complaints against the state and federal defendants, are DISMISSED WITH PREJUDICE; summary judgment is GRANTED for defendants Rogin and Hirtle.

I

BACKGROUND

It is difficult to summarize the tortuous path of this litigation. We rehearse this history here because the repetitiveness of it is in large part the ground for our decision. Fully fifteen years ago, our Court of Appeals described the beginnings of the story as follows:

> The battle began [in 1964] when the state aeronautics commission moved under Conn. Gen. Stat. § 15-79, which then governed taking of land for airports, to condemn the Simmons property [adjoining Bradley International Airport]. Pursuant to the statute, a petition for the determination of compensation was brought by the state in Hartford Superior Court; a judgment was rendered finding the taking reasonable and appointing a referee to assess damages. Anastasia Simmons [plaintiff's mother] appealed to the Connecticut Supreme Court, which reversed, finding error in the trial court's exclusion of evidence offered to show that property similarly situated had not been taken. *State v. Simmons*, 153 Conn. 351, 216 A.2d 632 (1966). Since this evidence was held to be relevant on the issue of whether the state had acted arbitrarily in singling out the Simmons land, the case was remanded for a new trial.

While the first suit was pending, Mrs. Simmons died, and Augustus entered the fray. Before the second trial began, he raised as an affirmative defense to the taking the fact that the state authorities had not received the requisite statutory approval from the Town of East Granby before proceeding with the condemnation. The trial court agreed; the Supreme Court affirmed. *State v. Simmons,* 155 Conn. 502, 234 A.2d 835 (1967). Round two for the Simmons family.

Undaunted, the state tried again, this time attempting to use Conn. Gen. Stat. § 48-12, the general condemnation statute, which provided for procedures different from section 15-79 in cases where compensation could not be agreed upon by the parties. The Simmons family prevailed again, in *Simmons v. State,* 160 Conn. 492, 280 A.2d 351 (1971), when the Supreme Court held that the state was required to use the section 15-79 procedure.

At about the same time the abortive condemnation attempts were taking place, a related dispute arose between the state and Simmons over some land upon which runway lights had been placed. Simmons claimed that the land was his; the state said it was the state's. An ejectment action followed. In *Simmons v. Parizek,* 158 Conn. 304, 259 A.2d 642 (1969), the Supreme Court held that since the complaint did not allege that the state officials had acted unconstitutionally or in a manner unauthorized by some statute, the suit was barred by the doctrine of sovereign immunity. Appellant took the hint, and on October 14, 1969 resurrected the ejectment action, this time alleging that the taking of the land and the erection of runway lights was done both unconstitutionally and without statutory authorization. That suit, Docket No. 162923,

> Hartford Superior Court, [was] still pending [as of January, 1973].
>
> Shortly before the Connecticut Superior Court decision in *Simmons v. Parizek, supra,* a Special Act was passed by the Connecticut General Assembly, allowing Augustus Simmons to sue the state for damages over "loss of use of land," arising out of the bumbling condemnation proceedings. On January 5, 1970, Simmons brought such a suit, Docket No. 163875, Hartford Superior Court; [as of January, 1973,] the action [was] still pending.
>
> Thus, if there ever was a litigant who knew that his claims would be fairly heard in the state courts, Augustus Simmons was he. Nevertheless, perhaps for a change of setting, he instituted [a] section 1983 action on December 22, 1971 [in the United States District Court for the District of Connecticut, *Simmons v. Wetherall,* Civil No. 14806] alleging that his property was taken without due compensation, and seeking damages.

Simmons v. Wetherall, 472 F.2d 509, 510-11 (2d Cir.), *cert. denied,* 412 U.S. 940 (1973); *see also Simmons v. McKone,* 158 Conn. 71 (1969) (lawsuit concerning plaintiff's succession to the land).

Judge Blumenfeld dismissed the section 1983 action after finding that, at most, Simmons had alleged a tortious interference with his property by state officials. Upon review of Judge Blumenfeld's decision, our Court of Appeals determined that Simmons' claim also involved a boundary dispute; accordingly, it affirmed in part and remanded in part so that the district court could stay the action pending resolution of one of two state court proceedings. *See Simmons v. Wetherall,* 472 F.2d at 511-12.

In December, 1977, the plaintiff retained the firm of Rogin, Nassau, Caplan, Lassman & Hirtle to represent him in his then-pending cases. Attorneys Edward Rogin and Robert Hirtle, two defendants in the instant action, were partners in that firm. Negotiations ensued, and Docket No. 163875 was consolidated with Docket No. 162923 and three other related actions that Simmons had pending in the Connecticut Superior Court. On December 13, 1977, state referee Louis Shapiro, with the consent of the parties, entered a final judgment by stipulation in the consolidated actions, a judgment which promised to end years of litigation. Pursuant to the judgment by stipulation, the plaintiff, still represented by Rogin, Nassau, Caplan, Lassman & Hirtle, agreed, *inter alia*, to sell the disputed parcels of land to the state for $518,000.

The resolution of the matter was short-lived. Only days after the settlement, Simmons voiced his refusal to accept the terms of the judgment, terms which he had previously stated were satisfactory. Specifically, Simmons wanted to retain one piece of "Parcel A," the whole of which he had agreed to sell on December 13, 1977. Again, the plaintiff's attorneys negotiated. On January 4, 1978, the state agreed to allow the plaintiff to retain the requested portion of Parcel A. In return, the plaintiff agreed to sell the remaining disputed land for $385,600. He further agreed that the '[j]udgment entered in this matter be a full and final settlement between the parties of any and all claims and disputes concerning said parcels of land and any and all other claims contained in the above consolidated cases." Memorandum in Support of Motion to Dismiss (filed Oct. 7, 1987) ("State Defendant's Memorandum"), Exhibit A at 3. Pursuant to the new

agreement and judgment, a closing was scheduled for January 24, 1978, at which time the exchange of title was to be consummated. *See* Affidavit of Robert Hirtle *attached to* Motion for Summary Judgment by Defendants Edward Rogin and Robert Hirtle (filed Jan. 6, 1988) at 2-3.

Before the closing, however, Simmons apparently encumbered the property by leasing a portion of it, notwithstanding that he knew title was to vest in the state pursuant to the stipulated judgment. Simmons took this action without the prior knowledge of his attorneys, and eventually, he refused to cooperate with his attorneys. On April 20, 1978, the firm sent the plaintiff a notice of its withdrawl [sic] as his counsel. *See id.* at 3.

On June 1, 1978, the plaintiff, acting *pro se*, filed a motion to reopen the judgment entered January 4, 1978. In rejecting the plaintiff's request, the state referee wrote:

> The plaintiff argued that Attorney Robert L. Hirtle, Jr., of the firm Rogin, Nassau, Caplan, Lassman and Hirtle, failed to disclose to him that he once served as an assistant attorney general for the State. His claim is that this created a conflict of interests and thereby he was not fully and adequately represented at the prior proceedings. It is true that Hirtle served as an assistant attorney general between 1965 and 1971. Thereafter he joined the Rogin law firm. Hirtle stated that before the Rogin firm entered the settlement talks he discussed with the plaintiff his former affiliation. The plaintiff was informed by his other counsel that Hirtle's intervention would be beneficial to the plaintiff. As it turned out, Attorneys Salzman and Silverman who represented the plaintiff in the trial before me of case #162923, *Simmons v. Parizek, et al.*

which went to judgment, were unable to negotiate a post judgment settlement with the state. The Rogin firm entered an appearance at a later date and the participation of attorneys Edward Rogin and Hirtle in discussions with the attorney general's office brought results. At a date prior to January 4, 1978, being on December 13, 1977, these five cases were settled by agreement with plaintiff and all attorneys. At this point, the plaintiff lauded his counsel and stated for the record his satisfaction with the settlement in the amount of five hundred and eighteen thousand dollars. A judgment was entered for the amount with full and clear consent of the plaintiff. A few days later, the plaintiff suddenly notified the court that he was unhappy with the settlement. As a result, with consent of counsel, the judgment was vacated . . . .

Plaintiff and his counsel, following further discussion with the Attorney General's office, came before the undersigned at a hearing on January 4, 1978. As a result of further discussions between the parties, an agreement was reached whereby the plaintiff was to retain the portion of land to which he desired to retain title. . . . Following this action judgment was entered on January 4, 1978 . . . .

I have carefully reviewed the plaintiff's claims under his motion. I find that in entering the judgment of January 4, 1978, the plaintiff was fully, adequately and skillfully represented by counsel at these prior proceedings. I find no conflict of interests as may be related to Attorney Hirtle. He rendered the highest degree of service and devotion to his client's (Plaintiff's) interest. As a result, the settlement reached was, in my judgment, the optimum. The plaintiff stated for the record, on January 4, 1978, how pleased he was with the result.

I must conclude that I find no merit in plaintiff's motion. He has played fast and loose with the court, his counsel and the state. His conduct is devious indeed.

State Defendants' Memorandum, Exhibit E.

Accordingly, the state secured a supplemental judgment dated June 2, 1978, *see id.*, Exhibit B, under which all encumbrances on the property were to be removed, and title to the disputed parcels of land automatically was vested in the state. The state referee further ordered the state to deposit with the Clerk of the Superior Court $385,600 on behalf of plaintiff. Plaintiff appealed the stipulated judgment, and the Supreme Court upheld it and the findings of the trial referee. *See Simmons v. Wetherall*, 180 Conn. 587 (1980) (*per curiam*). As of June 29, 1987, pursuant to this judgment, there was on deposit in United States treasury bills the sum of $497,314.24. This sum represents principal and interest and apparently is available to plaintiff upon appropriate motion to the Clerk of the Superior Court. *See* State Defendants' Memorandum, Exhibits C and D.

Ignoring Principles of res judicata and collateral estoppel, plaintiff then commenced a new series of state and federal court actions in which he raised claims which were, without exception, reiterations of the claims ultimately decided by the state Supreme Court in *Simmons v. Wetherall*.

For example, in 1981, the plaintiff initiated an action in this court in which he alleged that the taking of his land had violated his constitutional rights. *See Simmons v. United States Government*, Civil No. H-81-778 (JAC). In

1983, he initiated another action which sounded in trespass and ejectment. *See Simmons v. United States of America*, Civil No. H-83-225 (TEC). These two cases were consolidated in this court and dismissed as barred by res judicata in an order also noting that, by bringing these cases in federal court, plaintiff was impermissibly mounting collateral attacks on a valid state court judgment. *See* Order (dated Aug. 16, 1983) (Cabranes, J.). Our court of appeals affirmed that decision on appeal. *See Simmons v. Powers, Simmons v. United States*, Docket No. 83-6257 (2d Cir. Dec. 20, 1983) (unpublished order); *see* State Defendants' Memorandum, Exhibits F and G. Thereafter, the United States Supreme Court denied plaintiff's petition for a writ of certioriari [sic]. *See* State Defendants' Memorandum, Exhibit H.

Notwithstanding the rejection of his claims by every state and federal trial and apellate [sic] court having any arguable basis for assuming jurisdiction, this zealous litigant initiated yet another federal lawsuit in January, 1985. The plaintiff's strategy to avoid the res judicata effect of the 1978 state supplemental judgment was to allege new violations of federal statutes and to bring in an assortment of new defendants to join the old. Again, the court dismissed the complaint on res judicata grounds. *See Simmons v. Dole*, Civil No. H-85-45 (D.Conn. Apr. 8, 1985) (Blumenfeld, J.). Again, plaintiff appealed and the Court of Appeals affirmed, stating:

> We agree with the April 8, 1985, order of the district court dismissing appellant's claims on the ground of res judicata. We also consider this a frivolous appeal. Appellant has litigated the same matters numerous times before in both state and federal courts over a period of many

> years. Because appellant is a pro se litigant, we are not imposing sanctions at this time. However, appellant is hereby placed on notice that he risks imposition of sanctions in the future should be seek once again to relitigate these same matters.

Simmons v. United States, Docket No. 85-6087 (2d Cir. Nov. 22, 1985) (unpublished order).

Undeterred, plaintiff mounted another attack in Connecticut Superior Court just a few months later. In the new suit, filed in January 1986, he attempted to recover damages from the state. The state's motion to dismiss was granted. The Connecticut Appellate Court affirmed the dismissal, *see Simmons v. Burns*, 9 Conn.App. 802 (1986) (*per curiam*), and the Connecticut Supreme Court denied certification to appeal, *see Simmons v. Burns*, 201 Conn. 815 (1986).

II

THE INSTANT ACTION

Plaintiff commenced the instant action in Connecticut Superior Court on August 10, 1987. The action was removed on the petition of one of the defendants, the Administrator of the Federal Aviation Administration. The only even arguable new element in this suit is a claim that plaintiff has suffered from legal malpractice at the hands of his former attorneys, Edward Rogin and Robert Hirtle. *Cf.* Opinion of State Referee, quoted above in this Ruling at 5-6.

Prior to transferring the case to the docket of this court, Judge Dorsey granted a motion to dismiss the

action as to state defendants Julia Tashjian, Secretary of the State of Connecticut, and J. William Burns, the Commissioner of the Connecticut Department of Transportation on res judicata grounds. *See Simmons v. Burns*, Civil No. H-87-732, Ruling on Motion to Dismiss (D.Conn. Nov. 19, 1987). Plaintiff has filed what can be construed as an objection to the granting of the state defendants' motion to dismiss, which is one of the pending motions to which this ruling is addressed.

Thereafter, defendants Rogin and Hirtle filed a motion for summary judgment and the federal defendant filed a motion to dismiss. These pending motions present the court with the opportunity to write the final chapter of this lengthy and tiresome story.

A. The Motions to Dismiss

The doctrine of res judicata bars relitigation of the same cause of action between the same parties or their successor in interest. *See Mohegan Tribe v. Connecticut*, 528 F.Supp. 1359, 1370 n. 2 (D.Conn. 1982). It is an absolute bar not only as to every matter which was offered to sustain a claim, but also as to any other matter which might have been offered for that purpose. *See State v. Aillon*, 189 Conn. 416, 423, *cert. denied*, 464 U.S. 837 (1983). "[A] federal court must give to a state court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment [sic] was rendered." *Migra v. Warren City School District Board of Education*, 465 U.S. 75, 81 (1984). Moreover, a litigant "may not engage in extensive proceedings throughout the state court system, and then, after every point has been

decided against him by the state courts and the Supreme Court has denied certiorari, make a fresh start in federal court." *Friarton Estates Corp. v. City of New York*, 681 F.2d 150, 159 (2d Cir. 1982). Thus, issues which were actually litigated, or which could have been litigated, in a state court proceeding are entitled in a federal suit to the same preclusive effect accorded them by the state. *Migra*, 465 U.S. at 83; *Allen v. McCurry*, 449 U.S. 90, 94 (1980); *accord Kaufman v. Somers Board of Education*, 368 F.Supp. 28, 33 (D.Conn. 1973).

In Connecticut, a valid judgment entered by agreement or consent operates to end the controversy to the same extent as would a valid judgment rendered after adjudication on the merits. *See Connecticut Pharmaceutical Association v. Milano*, 191 Conn. 555, 558 (1983); *Gagne v. Norton*, 189 Conn. 29, 34 (1982). The Connecticut Supreme Court in *Simmons v. Wetherall*, 180 Conn. 587 (1980), upheld the actions of the state referee whereby title of the disputed land vested in the State of Connecticut. In the instant action, plaintiff asserts claims which rest upon his purported legal ownership of the same land.

Accordingly, Plaintiff's Motion to Set Aside Dismissal of State Defendants (filed Dec. 1, 1987) is DENIED, and the case against them is dismissed with prejudice.

Because the claims against the federal defendant rest upon the claim that the State of Connecticut is in wrongful possession of plaintiff's land, they are likewise barred. The Federal Defendant's Motion to Dismiss (filed Nov. 30, 1987) is therefore GRANTED, and the case against him is dismissed with prejudice.

B. Defendants Rogin's and Hirtle's Motion for Summary Judgment

Liberally construed, the complaint against Attorneys Rogin and Hirtle can be viewed as alleging fraud, breach of contract or legal malpractice. The adequacy and loyalty of their representation of plaintiff was explicitly addressed and decided against plaintiff by the state referee; the referee's denial of plaintiff's motion to reopen the judgment based claims of inadequate representation were upheld by the Connecticut Supreme Court in *Simmons v. Wetherall,* 180 Conn. at 589. Because the record does not demonstrate clearly that Rogin and Hirtle have been parties to litigation on the merits of any of these claims, there is some doubt whether they would be entitled in Connecticut courts to assert the prior state court judgment as a defense. *See State v. Ellis,* 197 Conn. 436, 462-69 (1985); *Doe v. Maher,* 40 Conn.Supp. 394, 405, 515 A.2d 134 (New Haven, 1986). It could be argued, consistently with the rationales of these decisions, that defendants *should* be so entitled because this plaintiff certainly has had a full and fair opportunity to litigate the claims. *See DiMauro v. Pavia,* 492 F.Supp. 1051, 1059 n. 7 (D.Conn.), *aff'd mem.,* 614 F.2d 1286 (2d Cir. 1979).

In any event, the record reveals another clear ground for granting summary judgment for Rogin and Hirtle. It is undisputed that these two attorneys ceased representing plaintiff almost nine years ago. Moreover, since plaintiff explicitly questioned the adequacy of their representation before the state referee in 1978, he cannot credibly argue that, until recently, he was unaware of the harm which he is alleged to have suffered at their hands.

Any suit based upon their representation is certainly barred by whatever statute of limitations might arguably be applicable. *See* Conn. Gen. Stat. § 52-576 (six-year limitation for actions based on simple or impled [sic] contract) and § 52-577 (three-year limitation for actions in tort, held applicable to legal malpractice in *Shuster v. Buckley*, 5 Conn.App. 473, 477 (1985)).

C. Prospective Relief

Finally, the court would be remiss if it did not put an end to plaintiff's vendetta and relieve its victims from the burden of vexatious relitigation of these issues. *See In re Martin-Trigona*, 737 F.2d 1254, 1262 (2d Cir. 1984), *cert. denied*, 106 S.Ct. 807 (1986); *see also Procup v. Strickland*, 792 F.2d 1069, 1073 (11th Cir. 1986). The District Court has the authority to issue "all writs necessary or appropriate in and of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). It may be appropriate in some circumstances to enter an injunction to prevent the continuation of harassments which come from frivolous and repetitious lawsuits. *See, e.g., Matter of Hartford Textile Corp.*, 681 F.2d 895, 897 (2d Cir. 1982), *cert. denied*, 459 U.S. 1206 (1983). Courts are not to be used as a vehicle for harassment by a litigant who asserts the same baseless claim repeatedly in slightly altered guises. *See Kane v. City of New York*, 468 F.Supp. 586, 590 (S.D.N.Y.), *aff'd mem.*, 614 F.2d 1288 (2d Cir. 1979). Although an order enjoining a particular plaintiff from commencing future actions is an unusual step, the courts have not hesitated to enter such orders where a litigant continues to abuse the legal process, and defendants, by filing meritless claims. *See, e.g., In re Martin-*

Trigona, 763 F.2d 140 (2d Cir. 1985), *cert. denied*, 106 S.Ct. 807 (1986).

Apart from such extraordinary and pathological examples as Anthony R. Martin-Trigona, it would be difficult to find a litigant more pertinacious that [sic] Augustus J. Simmons. This plaintiff has brought approximately one dozen suits arising out of the state's initially inept attempt to condemn his land over twenty years ago. At this point in his "legal career," he could not credibly argue that he believes, in good faith, that his claims have merit. *See* Fed. R. Civ. P. 11. He has harassed a variety of defendants and has squandered the resources of both state and federal courts, all due to his persistent refusal to accept as final the 1978 supplemental judgment of the Hartford Superior Court, and the 1980 decision of the Connecticut Supreme Court upholding that judgment. Our Court of Appeals has warned him unequivocally that he would risk the imposition of sanctions if he persisted in filing the same claim. It is difficult to believe, however, that any sanction, short of an injunction, would either be effective or appropriate to protect potential defendants and preserve judicial resources for other litigants who await their own day in court.

Accordingly, the court hereby ENJOINS plaintiff, Augustus J. Simmons, from filing in the United States District Court for the District of Connecticut or any other federal court any lawsuit in which he asserts the same claims as were litigated, or as might have been litigated, in the Connecticut Superior Court cases referred to as *Simmons v. Weatherall*, Docket No. 163875 (Superior Court at Hartford, Jan. 4, 1978, as modified June 2, 1978), *aff'd*,

180 Conn. 587 (1980), and all the cases consolidated therewith.

1. This injunction includes any filing in which the harm is alleged to have arisen from or relate to the plaintiff's ownership, at one time, of the parcels of land in the Town of East Granby as described in the original and supplemental judgments in *Simmons v. Wetherall,* Docket No. 163875, *supra,* and all cases consolidated therewith.

2. Plaintiff is also enjoined from filing any state or federal claims in any federal court against any of the defendants named in the complaint in this lawsuit of such lawsuit related to his alleged ownership of the parcels of land described in the original and supplemental judgments in *Simmons v. Wetherall,* Docket No. 163875, *supra,* and all cases consolidated therewith.

3. This injunction applies only to lawsuits of the sort described above filed in the federal courts, including the United States District Court for the District of Connecticut. Nothing in this order shall be construed as restricting plaintiff's ability to file a suit in any state court. Nor shall it be construed as restricting plaintiff's ability to file suit in any federal court, so long as the lawsuit does not relate to plaintiff's alleged ownership of the parcels of land described in the original and supplemental judgments in *Simmons v. Wetherall,* Docket No. 163875, *supra,* and all the cases consolidated therewith.

4. Nothing in this order shall be construed to deny plaintiff access to the United States Court of Appeals for the Second Circuit, or to the Supreme Court of the United States, in any matter.

5. Nothing in this order shall be construed to prohibit Augustus J. Simmons from filing complaints under 28 U.S.C. § 372(c), provided, however, that nothing in this order, and nothing in this subsection in particular, shall be construed as intimating any view on the constitutionality of 28 U.S.C. § 372. *See, e.g.*, Rule § 0.24, Complaints with Respect to Conduct of Judges, Rules of the United States Court of Appeals for the Second Circuit (Nov. 1983) (identical disclaimer by the Judicial Council of the United States Court of Appeals for the Second Circuit).

6. All future complaints submitted by plaintiff to this court shall first be reviewed for compliance with this order. Any complaint that does not comply with this order shall not be docketed and will be returned to plaintiff.

In entering this injunction, the court reserves the right to order such additional relief as may become appropriate or necessary to accomplish its objective of protecting individuals and the system of justice from further abuse by this litigant.

III

CONCLUSION

For the reasons stated above:

(1) Plaintiff's Motion to Set Aside Dismissal of State Defendants is DENIED, and the case against the state defendants in DISMISSED with prejudice.

(2) The Federal Defendant's Motion to Dismiss is GRANTED, and the case against it is DISMISSED with prejudice.

(3) The Motion for Summary Judgment of Defendants Rogin and Hirtle is GRANTED. There being no just cause for delay, judgment shall enter forthwith for defendants Rogin and Hirtle. *See* Fed. R. Civ. P. 54(b).

(4) The other pending motions, identified in the note at the margin and having been resolved by decisions on the above motions, are denied as moot.[1]

(5) Plaintiff is enjoined, as specified above, from filing any lawsuit in federal court in which he asserts the same claims as were litigated, or might have been litigated, in the Connecticut Superior Court cases referred to as *Simmons v. Wetherall*, Docket No. 163875 (Superior Court at Hartford, Jan. 4, 1978, as modified June 2, 1978), *aff'd*, 180 Conn. 587 (1980), and all the cases consolidated therewith.

It is so ordered.

Dated at New Haven, Connecticut, this 15th day of March, 1988.

Jose A. Cabranes
United States District Judge

NOTE

[1] The following motions filed by plaintiff are hereby denied as moot: Motion for Payment of Rent (filed Sept. 29, 1987); Motion for Order of Referral and Enforcement of 49 U.S.C. § 2216 (filed Nov. 12, 1987); Petition for Hearing on Determination of Due Process (Civil Process) Under 14th Amendment Upon all Necessary Parties (filed Nov. 19, 1987); Motion for Payment of Real Property Taxes by Federal Aviation Administration under 49 CFR § 25.106(c) (filed Nov. 25, 1987); Motion to Set Aside State Court Judgment Rendered Without the "Necessary Parties" (filed Dec. 30, 1987); Motion to Set Aside State Court Judgment Rendered Without Just Compensation (filed Dec. 30, 1987); Motion to Set Aside State Court Judgment Rendered Without Jurisdiction and in Violation of Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (filed Dec. 30, 1987); Motion to Set Aside State Court Judgment Rendered Without Due Process (filed Dec. 30, 1987).

CONN
H-87-732
CRABRANES

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

* * *

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 14th day of September one thousand nine hundred and eighty-eight.

Present:

HONORABLE J. EDWARD LUMBARD,
HONORABLE J. DANIEL MAHONEY,
Circuit Judges

HONORABLE CON. G. CHOLAKIS,
*District Judge.**

AUGUSTUS J. SIMMONS,
Plaintiff-Appellant,

-v.-

J. WILLIAM BURNS, et al.,
Defendants-Appellees.

ORDER
88-6093

(Filed
SEP 14 1988)

ISSUED AS
MANDATE:

October 5,
1988

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* Hon. Con. G. Cholakis, District Judge, United States District Court for the Northern District of New York, sitting by designation.

Appeal from the United States District Court for the District of Connecticut.

This cause came to be heard on the transcript of record from the United States District Court for the District of Connecticut, and was argued by appellant pro se and by counsel for appellees.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the order of said district court be and it hereby is AFFIRMED, and appellant is assessed double court costs.

1. We affirm for the reasons stated in the ruling of the district court. We also consider this a frivolous appeal. This is appellant's third appearance before this court in the past five years, and on each occasion res judicata barred or bars his reassertion of the same claims which were either fully litigated or should have been litigated in prior state and federal proceedings. In his last appearance before this court, *Simmons v. United States of America, et al.*, Docket No. 85-6087 (2d Cir. Nov. 22, 1985) (unpublished order), appellant Simmons was placed on notice that he risked imposition of sanctions should he seek to appeal the same matters again.

2. It is accordingly appropriate to assess double court costs against appellant pursuant to Fed. R. App. P. 38.

3. We specifically call to appellant's attention that we affirm the order of the district court in all respects, including its injunction against further federal litigation

concerning these claims, and that any violation of that injunction may be punished as a contempt of court.

/s/ J Edward Lumbard
J. Edward Lumbard,

/s/ J Daniel Mahoney
J. Daniel Mahoney,
Circuit Judges

/s/ Con. G Cholakis
Con. G. Cholakis,
District Judge

N.B. This summary order will not be published in the Federal Reporter and should not be cited or otherwise relied upon in unrelated cases before this or any other court.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

AUGUSTUS J. SIMMONS, Plaintiff v. UNITED STATES GOVERNMENT, THE FEDERAL AVIATION ADMINISTRATION; J. LYNN HELMS, ADMINISTRATOR, FAA STATE OF CONNECTICUT; STATE DEPARTMENT OF TRANSPORTATION; J. WILLIAM BURNS, COMMISSIONER, STATE DEPARTMENT OF TRANSPORTATION, Defendants	)	Civil Action No. H-81-778 JUNE 21, 1983 CONSOLIDATED ACTIONS

MOTION TO DISMISS

Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) the State Defendants hereby move the Court to dismiss these actions for lack of subject matter jurisdiction and failure to state a claim on which relief can be granted.

The State respectfully requests seven days in which to file its memorandum in support of this action.

STATE DEFENDANTS

Joseph I. Lieberman
Attorney General

By /s/ Gerard J Dowling
Gerard J. Dowling
Assistant Attorney General

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

AUGUSTUS J. SIMMONS, Plaintiff v. UNITED STATES OF AMERICA; ELIZABETH DOLE, SECRETARY UNITED STATES DEPARTMENT OF TRANSPORTATION; FEDERAL AVIATION ADMINISTRATION; J. LYNN HELMS, ADMINISTRATOR; STATE OF CONNECTICUT; J. WILLIAMS BURNS, COMMISSIONER, CONNECTICUT DEPARTMENT OF TRANSPORTATION, Defendants	)	Civil Action No. H-83-225 TEC JUNE 21, 1983 CONSOLIDATED ACTIONS

MOTION TO DISMISS

Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) the State Defendants hereby move the Court to dismiss these actions for lack of subject matter jurisdiction and failure to state a claim on which relief can be granted.

The State respectfully requests seven days in which to file its memorandum in support of this action.

STATE DEFENDANTS

Joseph I. Lieberman
Attorney General

By /s/ Gerard J. Dowling
Gerard J. Dowling
Assistant Attorney General

CERTIFICATION

On this 21st day of June 1983, a copy of the foregoing was mailed to Donna L. Fatsi, and Augustus J. Simmons.

/s/ Gerard J. Dowling
Gerald J. Dowling
Assistant Attorney General
90 Brainard Road
Hartford, CT 06114
Tel. (203) 566-7070

ORDER

Based upon the full record of this case, including the State Defendants' Memorandum in Support of Its [sic] Motion to Dismiss the Complaints (filed June 28, 1983), the exhibits appended thereto, and the arguments of counsel in open court on August 15, 1983, the court concludes that these cases effectively constitute appeals from state court judgments and litigation of them before this forum is barred by the doctrine of *Rooker v. Fidelity Trust Co.*, 261 U.S. 114 (1923), that collateral attack in this court on the judgment of the Connecticut Superior Court is barred by 28 U.S.C. § 1738, and that, in any event, the prior adjudication of these claims in *Simmons v. Wetherall*, 180 Conn. 587 (1980) bars their reassertion, because of the doctrine of res judicata. For all of the foregoing reasons, the state defendants' motion to dismiss the complaints in

Civ. Nos. H-81-778 and H-83-225 is GRANTED. It is so ordered.

/s/ Jose A Cabranes
Jose A. Cabranes,
U.S. District Judge
August 16, 1983, Hartford, Conn.

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 20th day of December, one thousand nine hundred and eighty-three.

Present:

HONORABLE
WILFRED FEINBERG
Chief Judge

HONORABLE
HENRY J. FRIENDLY

HONORABLE
JAMES L. OAKES
Circuit Judges.

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

AUGUSTUS J. SIMMONS,

Plaintiff-Appellant,

-v.-

ARTHUR B. POWERS, etc.,

Defendant-Appellee.

83-6257

(Filed
DEC 20 1983)

AUGUSTUS J. SIMMONS,

Plaintiff-Appellant,

-v.-

UNITED STATES OF AMERICA,
et al.,

Defendant-Appellee.

Appeal from the United States District Court for the District of Connecticut.

This cause came on to be heard on the transcript of record from the United States District Court for the District of Connecticut, and was argued by appellant pro se and by counsel for appellees.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed as follows:

1. This appeal arises out of a dispute over title to and use of land adjacent to Bradley International Airport. It concerns two actions, filed by appellant in the United States District Court for the District of Connecticut, and directed against various state and federal defendants. The complaint in the first case, Civ. No. H-81-778, was filed in October 1981, and subsequently amended. On February 7, 1983, Judge Cabranes granted the federal defendants' motion to dismiss. Simmons appealed, and this court, by order dated June 9, 1983, dismissed the appeal for lack of jurisdiction because the dismissal of the claim against the federal defendants did not constitute a final judgment of the district court. We stated that, to pursue the appeal, Simmons would have to seek the entry of a final judgment as to the federal defendants, or await the determination of the claims against the state defendants.

2. On March 22, 1983, appellant filed the complaint in the second case, Civ. No. H-83-225. On May 23, 1983, Judge Cabranes granted a motion by the State of Connecticut to consolidate both cases. On August 16, 1983, Judge Cabranes dismissed the complaints in the consolidated actions. Simmons now appeals from that dismissal. We agree with Judge Cabranes that the doctrine of res

judicata bars the reassertion of these claims, already litigated in state courts. Simmons v. Wetherall, 430 A.2d 1295 (Conn. 1980).

3. The judgment of the district court is affirmed.

/s/ Wilfred Feinberg
Wilfred Feinberg, Chief Judge

/s/ Henry J Friendly
Henry J. Friendly,

/s/ James L Oakes
James L. Oakes,
Circuit Judges.

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 22nd day of November, one thousand nine hundred and eighty-five.

Present:

HONORABLE WILFRED FEINBERG,
Chief Judge

HONORABLE WALTER R. MANSFIELD,

HONORABLE JAMES L. OAKES,
Circuit Judges.

AUGUSTUS J. SIMMONS,

Plaintiff-Appellant,

-against-

UNITED STATES OF AMERICA, et al.,

Defendants-Appellees.

85-6087

(Filed NOV 22 1985)

Appeal from the United States District Court for the District of Connecticut.

This cause came on to be heard on the transcript of record from the United States District Court for the District of Connecticut, and was argued by appellant pro se and by counsel for appellees.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the judgment of said District Court be and it hereby is AFFIRMED.

We agree with the April 8, 1985, order of the district court dismissing appellant's claims on the ground of res judicata. We also consider this a frivolous appeal. Appellant has litigated the same matters numerous times before in both state and federal courts over a period of many years. Because appellant is a pro se litigant, we are not imposing sanctions at this time. However, appellant is hereby placed on notice that he risks imposition of sanctions in the future should he seek once again to relitigate these same matters.

/s/ Wilfred Feinberg
Wilfred Feinberg, Chief Judge

/s/ Walter R Mansfield
Walter R. Mansfield,

/s/ James L Oakes
James L. Oakes,
Circuit Judges

Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

§ 4602. Effect upon property acquisition

(a) The provisions of section 4651 of this title create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase of condemnation.

(b) Nothing in this chapter shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately prior to January 2, 1971.

(Pub.L. 91-646, Title I, § 102, Jan. 2, 1971, 84 Stat. 1895.)